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09/825,609	04/03/2001	Earle Harry Sherrod	659/695	3279

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EXAMINER

REICHLE, KARIN M

ART UNIT	PAPER NUMBER
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3761

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DATE MAILED: 03/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/825,609

Applicant(s)

SHERROD ET AL.

Examiner

Karin M. Reichle

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 01 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-3,6,9-14 and 18-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3,6,9-14 and 18-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 18.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12-01-03 has been entered.

### ***Specification***

#### ***Drawings***

2. The drawings were received on 12-01-03. These drawings are approved by the Examiner.

### ***Description***

3. It is noted that the amendment to page 14, line 14 still does not comply with 37 CFR 1.121, see, e.g., line 11 thereof and compare entire sentence containing such line to the originally filed entire sentence. A compliant amendment must be submitted in the next response, if any.

4. The disclosure is objected to because of the following informalities: The Summary of the Invention section, i.e. a description of the invention of the claims, and the invention of the claims is no longer commensurate, see MPEP 608.01(d) and 1302.01. For example, where is a continuous water insoluble fluid impermeable delay layer set forth in this section?

Appropriate correction is required.

***Claim Objections***

5. Claims 1-3, 6, 9-14 and 18 are objected to because of the following informalities: on the last line of claims 1 and 12, “an” should be --the--. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

6. Claim 9 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 9 depends from now cancelled claim 8. Since there is more than one claim from which claim 9 could depend, this claim will not be further treated on its merits.

***Claim Language Interpretation***

7. The terminology “substantially affect the flow”, “substantial change to flow direction” and “partially inhibit the flow of fluid” is defined as set forth on page 10, line 16-page 11, line 6. The terminology “fluid impermeable” is interpreted in light of the specification at page 11, lines 15-20. With respect to the terminology “continuous”, the American Heritage Dictionary defines such as “Extending or prolonged without interruption or cessation, unceasing”. Also note Applicant’s remarks bridging pages 7-8 of the 10-15-02 response. With regard to the terminology “pore”, in light of the paragraph bridging pages 6-7 of the specification, such is

Art Unit: 3761

interpreted to include both interstices of fibrous materials as well as apertures of film materials.

The terminology "absorbent garment" is defined as set forth on page 4, lines 16-25.

***Claim Rejections - 35 USC § 103***

8. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

9. Claims 1-3, 6, 12-14 and 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Matsuda '054 in view of Kjellberg '787, Becker '538 and Kimberly Clark '451, hereinafter referred to as KC.

With regard to claims 1-3, 6, 12-14 and 19-20, see Matsuda at the Figures, col. 1, line 1, col. 1, line 26-col. 2, line 26, i.e. the body facing outer surface or cover layer is the top portion of 11, the garment-facing outer surface or cover layer is the bottom portion of 11, the absorbent layer is at least one of the layers 8-8b, the continuous fluid impermeable delay layer (see claim language interpretation section supra and col. 2, lines 18-26 and col. 1, lines 30-41) is at least one of 9-9b. With regard to claim 18, see previous discussion but the intake layer is 8 and the absorbent layer is at least one of 8a-8b. Therefore, the Matsuda sanitary napkin includes all the claimed structure except for an attachment portion for removably attaching such to an absorbent garment alone, claims 1-3, 6, 12-14 and 18, or in combination with an absorbent garment, claims 19-20, (Note the definition of absorbent garment in the claim language interpretation section supra). Again Matsuda describes a sanitary napkin for absorbing liquid. The American Heritage dictionary defines "sanitary napkin" as "a disposable pad of absorbent material worn to absorb menstrual fluid". The Matsuda reference is silent as to how the pad is worn to absorb fluid or

Art Unit: 3761

liquid. However it is well known that sanitary napkins, including those with delay layers, are intended to be worn inside or inserted into, i.e. is an insert, a pair of conventional underpants or panties, i.e. undergarments, for the purpose of absorbing fluid or liquid and that such are removably secured to the underpants, e.g., with the aid of an adhesive attachment portion, e.g. beads, layers or strips of pressure sensitive adhesive, see Kjellberg at col. 1, lines 5-15, Becker at the Figures, col. 3, lines 55-58, col. 4, line 63-col. 5, line 18 and KC at page 2, last paragraph and page 3, lines 20-22. Furthermore, KC at page 1, lines 1-17 discloses that conventional undergarments or underpants include cotton which is absorbent. Therefore to employ an attachment portion for removable attachment to an absorbent garment as claimed alone or in combination with the absorbent garment as taught by Kjellberg, Becker and KC with the Matsuda device would be obvious to one of ordinary skill in the art in view of the recognition that use of sanitary napkins together with such a portion or such portion with underpants including absorbent material to allow the napkins to be worn for the purpose of absorbing fluid or liquid is well known and the desire of Matsuda to provide a sanitary napkin for the purpose of absorbing fluid or liquid.

10. Claims 10-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Matsuda '054, Kjellberg '787, Becker '538 and Kimberly Clark '451 as applied to claim 1 supra and further in view of Poulsen '379.

The Matsuda device includes at least a first and a second absorbent layer with the second absorbent layer positioned between the at least one delay layer and the first absorbent layer but does not teach each primary surface of the first absorbent layer having a surface area less than the surface area of each primary surface second absorbent layer, e.g. the first absorbent layer is

Art Unit: 3761

smaller than the second, as claimed in claim 10. However see Poulsen '379 at the Figures and col. 2, lines 53-54 and 65-66, i.e. interchangeability of equal sized absorbent layers with those of increasing width from the body facing surface to the garment facing surface. To make the equal sized absorbent layers of Matsuda absorbent layers which increase in width from the body facing surface to the garment facing surface, i.e. a first absorbent layer which is smaller than the second absorbent layer, would be obvious to one of ordinary skill in the art in view of the interchangeability as taught by Poulsen. It is further noted that such a layer configuration would also provide a z-axis contour which is shaped more complementary to the crotch area of the body where sanitary napkins are worn.

### ***Response to Arguments***

11. Applicant's remarks have been considered but are either deemed moot in that the issue discussed has not been reraised or are deemed not persuasive in light of the objections and rejections supra.

### ***Conclusion***

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (703) 308-2617. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (703) 308-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3761

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Karin M. Reichle  
Primary Examiner  
Art Unit 3761

KMR  
February 20, 2004